DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of US Patent 6887153, claims 1-11 of US Patent 6582304, and claims 1-12 of US Patent 6267670. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant admits [spec pg 3: lines 1-7] that it is well known for a lottery ticket to include a set of numbers (e.g. 1-49) and for a purchaser to specify a desired set of numbers or to allow random assignment of the set of numbers and therefore would have been

obvious. Also it is considered to have been obvious to allocate portions of tickets to those tickets already created, but with available portions unallocated.

3. Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-22 of copending Application No. 10/457,101. Although the conflicting claims are not identical, they are not patentably distinct from each other for the reasons above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claim 1 is rejected under 35 USC 102(e) as being anticipated by Roberts (US5772510).**

6. Regarding claim 1, Roberts teaches a lottery ticket point of sale device; see figure 7. The device has a mechanism to accept currency at items 48 and 50. Roberts teaches "[t]he payment indication circuit 50 provides an indication of the amount of money inserted into slot 48 by the purchaser. If the proper price has been paid, printer

19 prints the ticket completion information 20a, 20b. See column 6, lines 60-65. The payment indication circuit is taken to determine the monetary value. The consumer is then provided with a lottery ticket. As broadly interpreted, a portion or fraction of a lottery ticket may include Robert's whole ticket and whole ticket value. Therefore, Roberts is taken to teach purchase of a fractional lottery ticket based on the determined monetary value. Roberts teaches that the provided ticket includes a ticket identifier (unique barcode 16 and 20) so that each purchased ticket may be properly identified, managed and associated with a winning entry. Roberts provides a ticket with a set of numbers [fig 2B] as is common for Lotto.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 3-10 are rejected under 35 USC 103(a) as being unpatentable over Roberts (US5772510) in view of applicant admitted prior art (lotto number sets).

9. Regarding claims 3-6, applicant admits [spec pg 3: lines 1-7] that it is well known for a lottery ticket to include a set of numbers (e.g. 1-49) and for a purchaser to specify a desired set of numbers or to allow random assignment of the set of numbers. It would have been equally obvious to one of ordinary skill at the time of the invention that either creating a new ticket (i.e. a new ticket record) or selecting (via a search) from a

collection of pre-existing tickets (i.e. an existing ticket record) would both be predictable ways for a customer to be associated with a lottery ticket whose ticket identifier is stored in a database as part of the electronic lottery system.

10. Regarding claims 7-10, associating a paying customer with his newly allocated ticket is taken to be increasing a total value amount of the selected ticket record in accordance with the (fractional) lottery ticket value. In other words, that lottery ticket which might have existed without association with a purchaser is now associated with a purchase value of the ticket, thereby "increasing a total value amount" for that ticker. Stated another way, that previously unsold ticket is now sold. Regarding claims 8-10, the claim calls for a positive step of adjusting; "to round up" is not a positive step of rounding. However, Official Notice is taken that it is well known for customer's total to be rounded up or down in order to avoid the necessity for loose change. It would have been obvious to one of ordinary skill at the time of the invention to have adjusted a purchase (or a change) amount up or down so as to result in a value more convenient for the retailer or the customer. Another interpretation of claims 7-10 results in an obvious method whereby the act of purchasing a selected (or created) lottery ticket (record) provides for a "rounding up" of an amount in association with that ticket. The previously unsold ticket is now sold and therefore has gone through a rounding increase consistent with the sale price of that ticket (portion/fraction).

11. **Claim 2 is rejected under 35 USC 103(a) as being unpatentable over Roberts (US5772510) in view of Herman (Herman, Ken, "Auchan cashes in on Lottery", 7/1/1992, Houston Post, pg A15).**

12. Regarding claim 2, Roberts does not appear to teach selling a customer a lottery ticket with funds from change due as part of a transaction with Roberts. However, Herman teaches offering lottery tickets for sale as part of the customer's change due. It would have been obvious to one of ordinary skill at the time of the invention to have offered lottery sales as part of a customer's change due stemming from a transaction with the POS device of Roberts, and in a manner consistent with the interpretation of "fractional" as described above. This would encourage higher sales from the customers of Roberts.

13. **Claims 1, 3-10 are alternatively rejected under 35 USC 103(a) as being unpatentable over applicant admitted prior art (fractional lotteries) in view of Roberts (US5772510).**

14. Regarding claim 1, applicant admits the well known lottery systems (such as in Germany) where players may purchase fractions (such as ½, ¼ shares) of a full lottery ticket and whereby the winners of such ticket shares receive respective shares (½ , ¼) of the prize [spec pg. 3]. Applicant does not speak of how the management of such fractional lottery tickets are managed, yet given Roberts' electronic management of lottery distribution and prize redemption/authentication, it would have been obvious to one of ordinary skill at the time of the invention to have electronically managed such a

fractional lottery system by stored ticket identifiers as well as fraction identifiers so that users can confidently purchase fractions (less than whole) of tickets and win respective fractions of the winning ticket prizes. IT would have been obvious to one of ordinary skill at the time of the invention to assign fractions of tickets from tickets having unassigned portions, so as to avoid three purchasers of ½ tickets from sharing the same ticket.

15. Regarding claims 3-6, applicant admits [spec pg 3: lines 1-7] that it is well known for a lottery ticket to include a set of numbers (e.g. 1-49) and for a purchaser to specify a desired set of numbers or to allow random assignment of the set of numbers. It would have been equally obvious to one of ordinary skill at the time of the invention that either creating a new ticket (i.e. a new ticket record) or selecting (via a search) from a collection of pre-existing tickets (i.e. an existing ticket record) would both be predictable ways for a customer to be associated with a lottery ticket whose ticket identifier is stored in a database as part of the electronic lottery system.

16. Regarding claims 7-10, it would have been obvious to one of ordinary skill at the time of the invention to managed the ticket inventory whereby fractions of tickets are associated with tickets having available fractions, rather than assigning all fractions to new, fully unallocated tickets. This concept of "sharing" tickets is taken to increase (i.e. round up) the fractional ticket amount when a 2nd customer is shares the unallocated portion of a ticket already allocating a portion to a 1st customer. This would avoid an excess of needless tickets all having only a small fraction allocated. This is similar to a

pizza shop selling slices of pizzas whereby steps are taken to minimize the number of pizzas having slices already claimed/missing.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey D. Carlson whose telephone number is 571-272-6716. The examiner can normally be reached on Monday-Fridays; off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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